

Nos. 21,310, 21,313 and 21,314

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

CALIFORNIA GAS PRODUCERS ASSOCIATION,  
INDEPENDENT OIL AND GAS PRODUCERS OF  
CALIFORNIA, JADE OIL AND GAS COMPANY,  
STATE OF TEXAS, TEXAS INDEPENDENT  
PRODUCERS AND ROYALTY OWNERS ASSO-  
CIATION, WEST CENTRAL TEXAS OIL AND  
GAS ASSOCIATION and PERMIAN BASIN  
PETROLEUM ASSOCIATION,

*Petitioners,*

vs.

FEDERAL POWER COMMISSION,

*Respondent.*

**BRIEF OF INTERVENOR  
CITY AND COUNTY OF SAN FRANCISCO**

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**PRELIMINARY STATEMENT AND JURISDICTION**

This case involves appeals filed by the California Gas Producers Association, Independent Oil and Gas Producers of California, the Jade Oil and Gas Company, the State of Texas, Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association and the Permian Basin Petroleum Association. The Independent Pe-

troleum Association of America has filed an Amicus Curiae Brief in support of petitioners herein.

The petitioners are requesting review of three orders issued by the Federal Power Commission authorizing a subsidiary of the Pacific Gas & Electric Company (PG&E), namely, the Pacific Gas Transmission Company (PGT) to import 100 million cubic feet per day of Canadian natural gas commencing on November 1, 1966, and an additional 100 million cubic feet per day commencing on November 1, 1967 for availability to the Northern California market.

These three orders are:

1. Order denying reconsideration, Waiver of the Commissioner's Rules and Making Determination of the Question of "Extraordinary Circumstances" (issued December 17, 1965).
2. Opinion and Order Issuing Certificate and Authorizing Importation of Natural Gas (issued June 15, 1966).
3. Order Denying Application for Rehearing (issued August 4, 1966).

The appeal is filed pursuant to Section 19(b) of the Natural Gas Act (15 USC, § 717r(b)).

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### QUESTIONS PRESENTED

1. Whether imports of natural gas will adversely affect the production of domestic gas and is it in the public interest to import such gas?
2. Whether the Federal Power Commission correctly excluded testimony of witnesses Arlan Edgar,

Bob R. Harris and Barry Hunsaker that would have allegedly established additional or alternative supplies of gas available and deliverable more cheaply than Canadian gas to the Northern California border? That excluding the testimony was a denial of due process to exclude such testimony?

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#### **INTEREST OF THE CITY AND COUNTY OF SAN FRANCISCO**

The City and County of San Francisco is the financial and commercial center of the West Coast and has a population of approximately 750,000 people.

Of prime consideration is the gas consumer in this area who must be continually protected and provided for and supplied with natural gas at reasonable rates.

The Pacific Gas & Electric Company services the City and County of San Francisco, the State of California and the Northwest and attempts to do so in the most economical manner possible. By piping in natural gas from Canada at a much lower rate than could be obtained from any other source, PG&E will insure an adequate gas supply in the future for increasing demands at low cost to the consumer.

Evidence to date shows the State of California does not have adequate gas supplies or fields to supply demands nor to handle its growth in industry.

It is also the contention of the City and County of San Francisco that the Federal Power Commission was correct in all of its rulings and there is no evidence to support the contentions and allegations of the petitioners.



**IMPORTS OF NATURAL GAS WILL NOT ADVERSELY AFFECT  
THE PRODUCTION OF DOMESTIC GAS**

It has been estimated that the population in the State of California will increase from nineteen million in 1965 to twenty-two million in 1970. New industries will necessarily develop to support that population and consumer requirements will increase. PG&E must be prepared to meet these future demands.

It is necessary to forecast prospective firm requirements including maximum peak requirements and to make commitments to purchase known supplies of natural gas sufficiently in advance of such requirements to allow time for the obtaining of all required regulatory approvals and the construction of facilities to transport that gas from point of delivery to customers. (R. 1613.)

It is noted that the gas producers of California have not made any definite statement as to whether there are sufficient reserves to supply future demands of PG&E. PG&E has purchased available domestic gas and will continue to do so for its growing needs.

The history of dry gas discoveries in California has been sporadic and volumes have varied tremendously as to quantity and quality. Petitioners have not produced any evidence to offset testimony that gas reserves are being depleted nor can they insure future discovery of necessary fields of gas.

There has been no existing pattern of discoveries to guarantee a future supply for the prospective firm



requirements of PG&E and it cannot be determined if there are available gas reserves. Evidence presented reflected that an analysis of potential sources of gas failed to disclose any significant quantity of uncommitted gas.

The petitioners have not been able to offer any guarantee of any future supply of gas. The State of Texas, through witnesses, make reference to shut-in wells and other sources, but it is evident that there was no application from out of state sources before the Commission.

There also has been no offering of proof that production of domestic gas will be affected in any way. Petitioners have made only vague reference to future discoveries, adequate reserves and alternate supplies of natural gas, but there has been no substantial offer of evidence to support these contentions.

The California producers have not established the proposition that they are ready, willing and able to undertake on a firm contract basis to supply the needs of PG&E in the future. They do not have the reserves available and they do not have the deliverability. (R. 1493.)

Petitioners allege also that there is no need in Northern California for the huge volumes sought by the PGT application, but PG&E, through testimony and its Exhibit No. 18, prove that there is a large and expanding market for natural gas in the area now served by PG&E and that this market can readily and advantageously use the additional supply of gas that is the subject of the application. (R.1110.)

PG&E also proved that on an annual basis, the requirements for gas as estimated from 1965 through 1970 are such that PG&E will use substantially all the out of state gas available to it. (R. 1111.)

The Natural Gas Act (15 USC, Section 717b) authorizes the importation of natural gas only when such import is "consistent with the public interest".

The Independent Petroleum Association in their Brief Amicus Curiae allege this importation of Canadian gas for use in the *San Francisco area* will in 1968 amount to approximately 30 percent. They cite *Northwest Natural Gas Company* case (13 FPC, 235 (1954) which is not in point as that case concerned the importation of gas as the "sole source" of supply.

The petitioners have not offered any evidence that there will be a continued dependency on Canadian gas, but use a theory that Canada may have a crisis and stop the supply.

Hearings are decided on facts, not suppositions, and it should be pointed out that:

"The Natural Gas Act was passed for the benefit of the ultimate consumer." (*Cities Service Gas Company v. Federal Power Commission*, 176 F.2d 548.)

In fact natural gas has for many years been imported from Canada because of the rapid expansion and growth of the market and the competitive price situation caused by the desire to serve that market.

If Canadian gas had not been allowed to be imported, the price for the domestic supply would cer-

tainly have been higher, primarily due to the supply and demand concept of economics.

Prior to the import of Canadian gas to California, the sole supplier of out of state gas was El Paso Company which supplied about 70% of PG&E's total gas purchases.

California producers have never been able to supply the growing market of Northern California but have provided a very necessary function in supplying PG&E so that they can meet their peak day requirements.

These California producers are paid approximately the border price for natural gas coming into California which is eleven cents (11¢) per thousand cubic feet (MCF) *more* than the incremental cost of the additional Canadian gas authorized by the Federal Power Commission in this case. This means the average producer in California is receiving a well-head price for their gas of approximately thirty cents (30¢) per MCF compared to the Canadian price of eighteen cents (18¢) per MCF.

Testimony presented by PGT (Tr. 1621) establishes the cost of Canadian gas at the city gates of San Francisco as 31.4 cents, 31.7 cents and 31.8 cents per MCF for the years 1968, 1969 and 1970, respectively, adjusted to 1,000 BTU (British Thermal Unit or heating quality basis). The incremental cost on the same basis for the additional 200 million cubic feet of gas (M2 cf) is 22.8 cents, 23.4 cents and 24.1 cents per MCF for the same respective years. It was also shown that the well-head price of California produced

gas is 30 cents per MCF (1,000 BTU basis) and approximately four cents (4¢) for transmission is then added. This makes a total of thirty-four cents (34¢) per MCF or eleven cents (11¢) higher than the cost of the Canadian gas. (Tr. 1622.)

Evidence was presented to show that in the interest of the consumers in Northern California it is necessary to preserve the gas fields as long as possible in order to meet future peak periods. The life index for Northern California has dropped considerably in the last few years as evidenced by the fact that the index showed in 1962, 17.4 years, but in 1964 it dropped to 12.4 years. (Tr. 782.) This clearly indicates that with no future reserves added and the withdrawal rate remaining the same, the present supply of California gas would be exhausted in 12½ years. Therefore, it is necessary that future loads be served from known reserves existing, such as the Canadian gas.

There is no doubt that the import of natural gas would in no way affect the production of domestic gas as a required necessity and it definitely is in the public interest to import this Canadian gas.

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**THE COMMISSION CORRECTLY EXCLUDED THE TESTIMONY  
AND EXHIBITS OF WITNESSES AND THERE WAS NO  
VIOLATION OF DUE PROCESS**

The proposed testimony of Arlan Edgar as a witness for the State of Texas was to indicate that the Delaware Basin which adjoins the Permian Basin in Texas on the west contained five productive gas fields



with proven reserves. In addition, 17 wells were being drilled and each is expected to be productive.

Mr. Edgar was also to testify that all of the gas contained in the above described fields and wells had been dedicated to an out of state market but none to the San Francisco or Northern California markets.

This proposed testimony does not support nor was it related to any application to dedicate any natural gas to an interstate market. (Tr. 137, 138.)

The Examiner was correct in excluding testimony not relevant to the instant hearing.

The State of Texas also attempted to introduce the testimony of Bob R. Harris, an employee of the Texas Railway Commission. (Tr. 135, 136.)

This testimony pertained to availability of uncommitted natural gas in the Permian Basin area of Texas and the number of shut-in wells in the State of Texas. It also does not support, nor is it related to, any application to dedicate any specific Texas gas for sale and/or transportation in interstate commerce.

Again the Examiner was correct in sustaining the motion to exclude the proposed testimony and supporting exhibits.

The State of Texas then sought the issuance of a subpoena duces tecum for the witness Barry Hunsaker, who was an employee of El Paso Natural Gas Company. (Tr. 139.) The testimony and supporting exhibits sought to be introduced related to the location, design and cost of facilities to enable El Paso Natural Gas Company an additional amount of gas in

the *Gulf Pacific* case which is not connected in any way with this case. These five pages of testimony out of approximately 30,000 pages was a minute part of a complex case and would contribute nothing.

Petitioners contend failure to bring in this evidence prevented the showing of an alternate method of supplying gas to California at a firm price and a cheaper price than the Canadian gas through the El Paso Gas Company pipeline.

Actually the offered testimony and exhibits deal only with flow diagrams and construction costs, and do *not* deal with price nor does it show the cost of delivering the gas to California.

Counsel for Texas said they have an adequate supply of gas but no means for delivering it to California so "we are going to volunteer the El Paso pipeline." (Tr. 42.)

Counsel for El Paso stated:

"El Paso has no application in this case. El Paso has no unfilled capacity by which we could make deliveries to PG&E. Therefore, we are not a competing applicant in this case; it has not been El Paso who offered any testimony. We have not filed any prepared testimony."

In addition to the above, counsel for El Paso said:

"I wish the record to reflect, in connection therewith, that on cold winter days, the requirement of El Paso's customers east of California are such that curtailment of the interruptible and portions of the firm industrial segments thereof are required and on such days El Paso

would not be able to deliver to its California customers gas over and above its firm quantities.

“As I stated previously, *on the record*, El Paso has no excess capacity by virtue of which it could make deliveries at this time to PG&E. Its system is operating virtually at capacity, in terms of the contracts which it now has.” (Tr. 1377.)

The *City of Pittsburgh v. Pacific Power Commission* case (237 F.2d 883) does indicate as set forth by petitioner that “all alternative means (to supply gas) should be considered”. But here no alternates have been shown nor would the inclusion of the proffered testimony add anything of a material nature.

“Questions arising out of another proceeding involving the natural gas company and the opponent would not be considered on review.” (*Michigan Consolidated Gas Co. v. Federal Power Commission*, 283 F.2d 204.)

“The finding of the Commission as to the facts, if supported by substantial evidence shall be conclusive.” (15 USC, § 717r(b), *Shell Oil Company v. Federal Power Commission*, 334 F.2d 1002.)

Here the petitioners have attempted to use testimony from unrelated proceedings and have not been able to rebut the highly substantial evidence that importation of Canadian gas is necessary and less costly.

The State of Texas alleges that because of the refusal of the Presiding Examiner and the Commission to allow in the testimony of Bob R. Harris and Barry Hunsaker such refusal was a denial of the State of Texas' inherent right to due process as guaranteed by



the Fifth Amendment of the United States Constitution.

“The parties to a proceeding before an administrative agency such as the Commission are entitled to:

*First*: Due notice as to the nature and scope of the contemplated inquiry;

*Second*: An opportunity to be heard and present evidence;

*Third*: A full hearing within conformity with the fundamental concept of fairness.

Arguing that the exclusion of the testimony was a denial of procedural due process must be examined in the light of the settled principles which govern the proceedings of administrative agencies.” (*Shell Oil Company v. Federal Power Commission*, 334 F.2d 1002.)

“A refusal of the Commission to issue a subpoena for a witness in a hearing was not prejudicial error when his testimony would not have been relevant or material to the issues.” (*Mexicana De Gas, S.A. v. Federal Power Commission*, 167 F.2d 804.)

There is no doubt that the petitioners were given every opportunity to present evidence which would be pertinent to this matter. They contend that testimony concerning probabilities and possibilities of methods of gas supply were germane to the issue, but it was correctly ruled that the proffered testimony was irrelevant and immaterial to the instant matter before the Commission. Petitioners were treated with the utmost fairness and there was no denial of due process.

**CONCLUSION**

The City and County of San Francisco contends that the exclusion of the proffered testimony was legal and justifiable as it was immaterial and irrelevant. Further that the rulings of the Presiding Examiner and the Commission were correct and necessary for the consumers in the area served by the PG&E.

The petitioners and the Independent Petroleum Association of America as Amicus Curiae have presented no evidence or authorities to show error or denial of due process and it is respectfully requested by the City and County of San Francisco that this appeal be denied.

Dated, San Francisco, California,  
January 24, 1967.

Respectfully submitted,

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